

DELAWARE CODE ANNOTATED
TITLE 11. CRIMES AND CRIMINAL PROCEDURE
PART II. CRIMINAL PROCEDURE GENERALLY
CHAPTER 43. SENTENCING, PROBATION, PAROLE AND PARDONS
SUBCHAPTER VII. EXPUNGEMENT OF CRIMINAL RECORDS

§ 4371 Statement of policy.

The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, obtain an education or to obtain credit. This subchapter is intended to protect innocent persons from unwarranted damage which may occur as the result of arrest and other criminal proceedings which are unfounded or unproven. (62 Del. Laws, c. 317, § 2.)

NOTES, REFERENCES, AND ANNOTATIONS

"Innocent." -- While the word "innocent" should be broadly interpreted in order to give meaning to both this section and § 4373(a) of this chapter, since a prior conviction only establishes prima facie evidence that manifest injustice would not result from retention of records of nonconviction arrests, it does not follow that "innocent" should be construed as to include a pardon in light of the fact that § 4372 of this chapter permits expungement only in three specific circumstances. *State v. Skinner*, Del. Supr., 632 A.2d 82 (1993).

§ 4372 Termination of criminal action in favor of accused.

(a) If a person is charged with the commission of a crime and
(1) Is acquitted; or
(2) A nolle prosequi is taken, or the charge is otherwise dismissed, the person may file a petition setting forth the relevant facts and requesting expungement of the police records, and the court records relating to the charge.

(b) The petition shall be filed in the Superior Court in the county where the case was terminated, disposed of or concluded.

(c) A copy of the petition shall be served on the Attorney General, who may file an objection or answer to the petition within 30 days after it is served on the Attorney General.

(d) Notwithstanding any provision to the contrary, the Attorney General or designee responsible for prosecuting a criminal action may petition the court to expunge the instant arrest record of a defendant if at the time of a state motion to dismiss or entry of nolle prosequi in the case, the prosecutor has determined that the continued existence and possible dissemination of information relating to the arrest of the defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute a manifest injustice to the defendant.

(62 Del. Laws, c. 317, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 150, § 5.)

NOTES, REFERENCES, AND ANNOTATIONS

Effect of amendments. -- 72 Del. Laws, c. 150, effective July 12, 1999, added (d).

"Innocent." -- While the word "innocent" should be broadly interpreted in order to give meaning to both § 4371 and § 4373(a) of this chapter, since a prior conviction only establishes prima facie evidence that manifest injustice would not result from retention of records of nonconviction arrests, it does not follow that "innocent" should be construed as to include a pardon in light of the fact that this section permits expungement only in

three specific circumstances. *State v. Skinner*, Del. Supr., 632 A.2d 82 (1993).

Circumstances where expungement permitted. -- This section is carefully drafted; it permits expungement only in limited circumstances such as acquittal, nolle prosequi or other dismissal, consistent with its intent to protect innocent persons. *State v. Skinner*, Del. Supr., 632 A.2d 82 (1993).

Construction with other sections. -- A person who is discharged from probation before judgment, pursuant to 11 Del. C. § 4218, is eligible to seek expungement pursuant to this section. *Ryan v. State*, Del. Supr., 791 A.2d 742 (2002).

Effect of subsequent pardon. -- Defendant's subsequent pardon did not remove the underlying criminal conviction for expungement purposes. *State v. Skinner*, Del. Supr., 632 A.2d 82 (1993). This section permits expungement of arrest and court records only when the underlying charge has been terminated through an acquittal or dismissal; while a pardon may remove the effect of a conviction, it may not provide standing to secure expungement of the arrest records. *State v. Skinner*, Del. Supr., 632 A.2d 82 (1993).

§ 4373 Hearing by Court; granting or denial of expungement.

(a) Unless the Court believes a hearing is necessary, petitions shall be disposed of without a hearing. If the Court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition. However, the Court shall grant

petitions filed by the Attorney General or his or her designee pursuant to § 4372(d) of this title. The fact that the petitioner has previously been convicted of a criminal offense, other than that referred to in the petition, shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner.

(b) The State shall be made party defendant to the proceeding. Any party aggrieved by the decision of the Court may appeal, as provided by law in civil cases.

(c) If an order expunging the records is granted by the Court, all the records specified in the order shall, within 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged records, and who shall insure that the records or the information contained therein is not released for any reason except as specified in this subchapter. In response to requests from nonlaw-enforcement officers for information or records on the person who was arrested, the law-enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

(62 Del. Laws, c. 317, § 2; 72 Del. Laws, c. 150, § 6.)

NOTES, REFERENCES, AND ANNOTATIONS

Effect of amendments. -- 72 Del. Laws, c. 150, effective July 12, 1999, inserted the present fourth sentence in (a).

"Innocent." -- While the word "innocent" should be broadly interpreted in order to give meaning to both § 4371 of this chapter and subsection (a) of this section, since a prior conviction only establishes

prima facie evidence that manifest injustice would not result from retention of records of nonconviction arrests, it does not follow that "innocent" should be construed as to include a pardon in light of the fact that § 4372 of this chapter permits expungement only in three specific circumstances. State v. Skinner, Del. Supr., 632 A.2d 82 (1993).

§ 4374 Disclosure of expunged records.

(a) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement agency, it shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the Court which ordered the record expunged.

(b) Where disclosure to law-enforcement officers in the lawful performance of their duties in investigating criminal activity is permitted by subsection (a) of this section, such disclosure shall apply for the purpose of investigating particular criminal activity in which the person, whose records have been expunged, is considered a suspect and the crime being investigated is a felony or pursuant to an investigation of an employment application as an employee of a law-enforcement agency.

(c) Nothing contained in this section shall require the destruction of photographs or fingerprints taken in connection with any felony arrest and which are utilized solely by law-enforcement officers in the lawful performance of their duties in investigating criminal activity.

(d) Nothing herein shall require the destruction of court records or records of the Department of Justice. However, all such records, including docket books,

relating to a charge which has been the subject of a destruction order shall be so handled to ensure that they are not open to public inspection or disclosure.

(e) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the person as an arrest for any reason.

(f) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor, and shall be punished accordingly.

(62 Del. Laws, c. 317, § 2.)